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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g., B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).

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*B-232678, January 25, 1989 was changed from published to unpublished.

APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-203900 Feb. 2, 1989

Purpose availability

Inspector General

An appropriation restriction contained in the Treasury Appropriations Act of 1989, Pub. L. No. 100-440, prohibiting the placement of certain Treasury law enforcement organizations under the "operation, oversight or jurisdiction" of the Treasury Inspector General, was found to conflict with certain provisions of the Inspector General Act Amendments of 1988, Pub. L. No. 100-504, that established a statutory Inspector General in the Department of the Treasury. The latter enacted Pub. L. No. 100-504 supersedes the "jurisdiction" and "oversight" provisions in Pub. L. No. 100-440. The "operation" provision is not in conflict and therefore this provision of the restriction continues in effect.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-232057 Feb. 9, 1989

Meritorious claims

Determination

A transferred employee, who has been unable to sell his residence at his former duty station for a period in excess of 5-1/2 years, is not entitled to the relocation services under 5 U.S.C. § 5724c and the implementing Federal Travel Regulations (FTR) since the employee transferred on June 22, 1983, prior to the effective date of section 5724c. In addition, since more than 3 years have elapsed since the transfer, the employee has exceeded the 3-year time limitation contained in FTR, para. 2-6.1(e) for reimbursement of real estate expenses.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Judgment Payments

B-233552 Feb. 14, 1989

Market values

Computation

Real property

Condemnation

The Fifth Amendment of the Constitution provides that no ". . . private property [shall] be taken for public use, without just compensation." Generally, just compensation is measured by the fair market value of the property taken.

Fair market value is not the only standard of just compensation. The Supreme Court has indicated that other measures of just compensation are appropriate "when market value has been too difficult to find, or when its application would result in manifest injustice to the owner."

Courts generally employ three methods of valuation in condemnation proceedings - comparable sales, capitalization of earnings, and replacement costs.

Condemnation of the Washington Public Power Supply System nuclear power plant I (WNP-1) presents a unique fact situation which may not lend itself to the usual methods of valuation.

The Attachment B to the report (Davis report) prepared for DOE's Richland office appears to present a fairly accurate picture of the common methods of valuation that a court may consider in assessing the value of the WNP-1.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-231927 Feb. 3, 1989

Compensation

Compensation retention

Eligibility

An employee, who exercised his reemployment rights under 10 U.S.C. § 1586 (1982), accepted a demotion and returned from overseas to his prior position in Hawaii. He is not entitled to additional compensation on the basis that the agency erroneously set his pay upon his return since he was granted saved pay under applicable statute and regulations and since this was the greater benefit available to him at that time.

CIVILIAN PERSONNEL

B-231380 Feb. 8, 1989

Compensation

Overtime

Eligibility

Burden of proof

The duties of Customs Service "SELECT" data transcribers only involve entering data from an entry package to a computer, and such work does not qualify as the performance of "inspectional services" under 19 U.S.C. §§ 267, 1451 (1982). These employees are entitled to overtime only under 5 U.S.C. §§ 5541 to 5549 (1982).

CIVILIAN PERSONNEL

B-231839 Feb. 9, 1989

Relocation

Residence transaction expenses

Reimbursement

Eligibility

Voluntary separation

A transferred employee who has remained legally married and whose husband resided with her continuously in the same household at the old duty station is entitled to receive full reimbursement of real estate expenses associated with the sale of her residence at the old duty station. Her filing of a petition for legal separation which was later withdrawn without any court action does not affect the result.

CIVILIAN PERSONNEL

B-232057 Feb. 9, 1989

Relocation

Residence transaction expenses

Reimbursement

Eligibility

Time restrictions

With regard to submission of the claim to the Congress under the meritorious claims authority, 31 U.S.C. § 3702(d) (1982), we decline to recommend this claim to the Congress since the claim does not involve equitable circumstances of an unusual nature nor is it the type of situation which is unlikely to occur in the future.

CIVILIAN PERSONNEL**B-233310 Feb. 9, 1989****Relocation****Residence transaction expenses****Reimbursement****Eligibility****Property titles**

Transferred employee owned property at the old duty station jointly with his wife who filed for chapter 7 bankruptcy. After filing for bankruptcy, trustee in bankruptcy took title to wife's interest in property. Therefore, upon subsequent sale of realty, employee may be reimbursed only one-half of real estate expenses since title was in name of employee and trustee in bankruptcy, a nonmember of his immediate family.

CIVILIAN PERSONNEL**B-232770 Feb. 10, 1989****Travel****Permanent duty stations****Actual subsistence expenses****Prohibition****CIVILIAN PERSONNEL****Travel****Temporary duty****Per diem****Eligibility**

Claims for per diem for travel within a 35-mile radius of the permanent duty station may be denied where the agency limited per diem to travel outside that radius.

CIVILIAN PERSONNEL

B-192267.2 Feb. 17, 1989

Relocation

Overseas personnel

Family separation allowances

Eligibility

The Separate Maintenance Allowance (SMA) authorized in 5 U.S.C. § 5924 to be paid to an employee when assigned to a post in a foreign area that is dangerous, unhealthful, or where living conditions are adverse in order to enable the employee to meet the additional expenses of maintaining a spouse or dependents elsewhere, may not be paid to an employee when his wife has maintained a separate household for more than 2 years before he was assigned to work in Saudi Arabia. Since the assignment overseas was not the cause for the maintenance of separate households, the employee is not entitled to SMA.

CIVILIAN PERSONNEL

B-230746 Feb. 17, 1989

Relocation

Temporary quarters

Actual subsistence expenses

Reimbursement

Eligibility

CIVILIAN PERSONNEL

Relocation

Temporary quarters

Determination

Criteria

A transferred employee was authorized temporary quarters for 60 days, but the agency denied reimbursement based on the employee's occupancy of a rented house, movement of household goods into the house, and the length of time of occupancy (1-1/4 years). We conclude that, at the time he moved into the house, he only intended to occupy it on a temporary basis. He negotiated a month-to-month lease, he stored a large quantity of goods in his garage because the house was too small, and he attempted to obtain adequate permanent quarters but was unable to do so within his means. Under FTR, para. 2-5.2c (Supp. 4, Aug. 23, 1982), he is entitled to reimbursement for temporary quarters subsistence expenses.

CIVILIAN PERSONNEL

B-231691 Feb. 17, 1989

Relocation

Household goods

Commuted rates

Reimbursement

Amount determination

CIVILIAN PERSONNEL

Relocation

Household goods

Commuted rates

Weight certification

Evidence sufficiency

An employee whose travel order authorized the transportation of her household goods on the commuted rate basis engaged a carrier who agreed to perform the service based on a binding estimated weight of 8,000 pounds. In the absence of valid weight certificates or evidence that the carrier's binding estimate was based on 7 pounds per cubic foot the commuted rate is not authorized. Reimbursement of the commuted rate cannot be based on a carrier's binding weight estimate. The proper basis for reimbursement is the employee's actual expenses.

CIVILIAN PERSONNEL

Relocation

Relocation travel

Dependents

Eligibility

About 2 weeks after an employee reported to her new permanent duty station her minor daughter married, and 8 months after the marriage the daughter relocated to the employee's new home as the result of a separation from her husband. The daughter's transportation and related expenses may not be paid since she was married at the time she traveled and, therefore, no longer qualified as a member of the employee's immediate family for transportation allowance purposes.

CIVILIAN PERSONNEL
Leaves of Absence
Military leave
Eligibility

B-231760 Feb. 17, 1989

Federal employees who were members of the California National Guard were called to perform full time emergency duty to help in the effort to fight forest fires. The request for military leave under 5 U.S.C. § 6323(b) (1982) is denied since they were not called to provide military aid "to enforce the law."

CIVILIAN PERSONNEL
Compensation
Overpayments
Error detection
Debt collection
Waiver

B-233047 Feb. 22, 1989

An employee who was covered by social security received overpayments of pay because the agency deducted only the medicare portion and not the full Federal Insurance Contributions Act (FICA) premiums from his salary. The overpayments may not be waived under the provisions of 5 U.S.C. § 5584 (1982 & Supp. IV 1986) where the record shows that the employee was not without fault in this matter since he failed to effectively examine earnings statements and tax statements that would have alerted him to the error.

CIVILIAN PERSONNEL
Compensation
Fringe benefits
Health insurance

B-219740.3 Feb. 23, 1989

Temporary Schedule C employees may not be granted health insurance benefits coverage by the Office of Personnel Management (OPM) since under the provisions of the applicable OPM regulation 5 C.F.R. § 890.102 (1988), health insurance benefits coverage may not be granted to employees serving under an appointment limited to 1 year or less.

CIVILIAN PERSONNEL
Compensation
Retirement plans
Payments
Interest

B-232231 Feb. 23, 1989

An employee is not entitled to reimbursement for interest he was assessed because, based on erroneous advice, he made a late deposit into the Civil Service Retirement System for credit for post-1956 military service. There is no statutory provision authorizing such reimbursement.

CIVILIAN PERSONNEL
Leaves of Absence
Annual leave
Charging
Retroactive adjustments
Sick leave

B-233945 Feb. 24, 1989

An employee, who used annual leave instead of sick leave based on the incomplete advice received from the agency personnel office, may retroactively substitute sick leave for annual leave to avoid forfeiture of the annual leave in a workers' compensation leave buy-back situation. Prior decisions distinguished.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-230988 Feb. 3, 1989

Pay

Basic quarters allowances

Rates

Determination

Dependents

Member of the armed services who was entitled to claim basic allowance for quarters at the with-dependent rate at the time of his divorce from another member, since he was ordered to pay child support, did not receive such payment because he did not formally claim the with-dependent rate. Member, who now has been advised of his entitlement, should be paid at the with-dependent rate retroactive to the divorce, since the record shows that he attempted to initiate a claim at that time but did not pursue it because of erroneous advice from his base finance and accounting officer.

PROCUREMENT

PROCUREMENT

B-232434.3 Feb. 1, 1989

Bid Protests

89-1 CPD 100

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration of prior decision is denied where the request contains no statement of error of fact or law warranting reversal or modification but merely restates argument made by protester and considered previously by the General Accounting Office.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

Request for reconsideration filed more than 10 working days after basis for reconsideration is known is untimely and will not be considered.

PROCUREMENT

B-232958 Feb. 1, 1989

Bid Protests

89-1 CPD 101

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest alleging that agency improperly solicited competitive bids for refuse collection and disposal services at a federal facility located within the protester's exclusive franchise territory is dismissed as untimely where not filed until after bid opening.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

B-232958 Con't

Feb. 1, 1989

General Accounting Office (GAO) will consider an untimely protest under the significant issue exception to GAO's timeliness rules only where the protest involves a matter that has not been considered on the merits in previous decisions and which is of widespread interest to the procurement community.

PROCUREMENT

Competitive Negotiation

Offers

Principal/agent relationships

Identification

B-233002 Feb. 1, 1989

89-1 CPD 102

Protest against rejection of proposal allegedly submitted by offeror's agent is denied where the agent did not identify the principal or disclose its agency relationship in the proposal. To allow identification of the principal after the closing date for the receipt of proposals would be tantamount to the submission of a new offer or the transfer of an offer, which is not permitted except in limited circumstances not present in this case.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-233148.2 Feb. 1, 1989

89-1 CPD 103

A request for reconsideration of a prior decision that does not indicate that the prior decision contained errors of fact or of law or information not previously considered that warrant its reversal or modification is denied.

PROCUREMENT

B-233858.2 Feb. 1, 1989
89-1 CPD 104

Bid Protests

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration is denied where protester reiterates arguments initially raised and raises new arguments which clearly fail to show any error of fact or law that would warrant reversal or modification.

PROCUREMENT

B-234072 Feb. 1, 1989
89-1 CPD 105

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protester's post-bid opening allegation that solicitation requirement relating to drydocking of vessels includes the use of marine railways is untimely filed and will not be considered since requirement was apparent in solicitation prior to bid opening.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Determination criteria

Contracting agency properly determined protester's low bid to be nonresponsive where it did not comply with the requirement in the invitation for bids relating to the method of drydocking ships.

PROCUREMENT B-232693 Feb. 2, 1989
Competitive Negotiation 89-1 CPD 107
Contract awards
Propriety

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Protest that agency improperly found awardee's proposal compliant with mandatory solicitation requirement is sustained where agency unreasonably determined that information furnished with proposal established awardee's compliance with this requirement.

PROCUREMENT B-233132 Feb. 2, 1989
Sealed Bidding 89-1 CPD 109
Bids
Responsiveness
Brand name/equal specifications
Salient characteristics

Protester's bid was properly rejected as nonresponsive to a brand name or equal invitation for bids where the bid for a generator set powered by a diesel engine offered a 6-cylinder engine rather than a 12-cylinder engine as specified in the solicitation, which the agency reasonably determined was necessary for the desired performance.

PROCUREMENT B-234021 Feb. 2, 1989
Bid Protests 89-1 CPD 110
GAO procedures
Protest timeliness
10-day rule

Protest challenging rejection of offer as late is untimely when filed more than 10 working days after receipt of agency letter rejecting offer.

PROCUREMENT**B-232677.3 Feb. 3, 1989
89-1 CPD 112****Bid Protests
GAO procedures
Protest timeliness
10-day rule**

Protest is untimely when filed at the General Accounting Office more than 10 working days after the basis of the protest is known.

PROCUREMENT**Competitive Negotiation
Best/final offers
Contractors
Notification**

Although an amendment to a solicitation does not specifically request offerors to submit best and final offers (BAFOs), language giving notice to all offerors of a common cutoff date for receipt of revised offers has the intent and effect of a request for BAFOs.

PROCUREMENT**B-232721 Feb. 3, 1989
89-1 CPD 113****Competitive Negotiation
Contract awards
Propriety****PROCUREMENT****Contractor Qualification
Organizational conflicts of interest
Allegation substantiation
Evidence sufficiency**

Award to a firm that employs a former government employee is not precluded on the basis of a conflict of interest where there is no evidence to demonstrate that the employee exerted improper influence on behalf of the awardee.

PROCUREMENT **B-232721 Con't**
Competitive Negotiation **Feb. 3, 1989**
Offers
Evaluation errors
Prices

Protest is sustained where, because technical evaluation of the protester's proposal was in some instances unreasonable, and in performing a technical/price trade-off the contracting officer relied on unsupported conclusions of a technical approval authority, it is unclear that the contracting officer would have chosen to award the contract to a firm that offered to perform at a price substantially higher than that offered by the protester.

PROCUREMENT **B-233172 Feb. 3, 1989**
Competitive Negotiation **89-1 CPD 114**
Contract awards
Initial-offer awards
Propriety

Award on an initial proposal basis, without discussions, is proper where the solicitation advises offerors of this possibility, and the competition clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government.

PROCUREMENT **B-233224 Feb. 3, 1989**
Competitive Negotiation **89-1 CPD 115**
Contract awards
Administrative discretion
Technical equality
Cost savings

Protest against agency determination that technical proposals were essentially equal and to award to low cost offeror is sustained where source selection officials did not evaluate proposals in accordance with stated evaluation criteria which were listed in descending order of importance.

PROCUREMENT	B-232291.2	Feb. 6, 1989
Competitive Negotiation	89-1	CPD 116
Contract awards		
Propriety		
Pending disputes		
Allegation investigation		

Protest of an award to an offeror under investigation for alleged procurement-related unethical conduct, on the basis that an affirmative determination of the awardee's responsibility could not reasonably have been made in good faith, is denied where awardee had not been suspended or debarred and where pursuant to department-wide policy guidelines establishing special preaward requirements for such contractors, awardee conducted an internal investigation and certified that improper conduct had not occurred with respect to this procurement, which information was reviewed and found acceptable by procuring officials prior to award.

PROCUREMENT	B-232953	Feb. 6, 1989
Bid Protests	89-1	CPD 117
GAO procedures		
Purposes		
Competition enhancement		

General Accounting Office (GAO) will not consider argument that reading of solicitation specifications in a more restrictive manner is necessary to meet the government's needs, since GAO's role in resolving bid protests is to ensure that statutory requirements for full and open competition have been met, and protester's interest in benefiting from more restrictive specifications is not protestable under this bid protest function.

PROCUREMENT **B-232953 Con't**
Competitive Negotiation **Feb. 6, 1989**
Contract awards
Propriety

Award is not shown unreasonable where contrary to protester's objection that regulatory requirement for strong tight containers utilized in shipping hazardous materials was not met, record indicates requirement was met.

PROCUREMENT **B-232977 Feb. 6, 1989**
Competitive Negotiation **89-1 CPD 118**
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Weighting

In negotiated procurements, the government is not required to make award to the firm offering the lowest cost where solicitation does not state that award will be made on that basis, but instead provides that award will be made to the offeror whose proposal is most advantageous to the government, price and other factors considered.

PROCUREMENT **B-232992 Feb. 6, 1989**
Bid Protests **89-1 CPD 119**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Allegation that solicitation improperly was not set aside for small businesses and did not accord preference to small disadvantaged women-owned businesses is dismissed as untimely because this alleged impropriety was apparent from the face of the solicitation and should have been filed prior to the closing date for the receipt of initial proposals, instead of after the award.

PROCUREMENT B-232992 Con't
Competitive Negotiation Feb. 6, 1989
Offers
Evaluation
Downgrading
Propriety

Where procuring agency downgraded protester's technical proposal on the basis of proximity to site and continuity of service, such scoring was reasonable under stated evaluation factors of comprehensiveness of services.

PROCUREMENT B-233367; B-233168
Contractor Qualification Feb. 6, 1989
Responsibility 89-1 CPD 122
Contracting officer findings
Negative determination
GAO review

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

Where bid bond individual sureties have been proposed for debarment, in one case as a result of convictions for fraud in connection with a government contract, the agency has a reasonable basis for finding the sureties unacceptable and rejecting bidder as nonresponsible.

PROCUREMENT **B-233504 Feb. 6, 1989**
Specifications **89-1 CPD 123**
Minimum needs standards
Competitive restrictions
Geographic restrictions
Justification

Procurement of meals, lodging, transportation, and a night conference room for Army recruits may be properly limited to firms within a 5-mile radius of the military processing station; limitation is not unduly restrictive where it reflects the agency's actual needs.

PROCUREMENT **B-233950 Feb. 6, 1989**
Contract Management
Federal procurement regulations/laws
Revision
Subcontracts

General Accounting Office has no comment on Federal Acquisition Regulation case No. 88-60, a proposal to revise Standard Forms 294 and 295 which are used by government contractors to report data on subcontracts.

PROCUREMENT **B-232739, et al.**
Competitive Negotiation **Feb. 7, 1989**
Offers **89-1 CPD 124**
Evaluation
Technical acceptability

Procuring agency's rejection of protesters' proposals was not unreasonable where the technical evaluation reasonably determines that the protesters failed to demonstrate in their proposals their ability to comply with the solicitation requirements within the established production schedule.

PROCUREMENT **B-232739, et al. Con't**
Competitive Negotiation **Feb. 7, 1989**
Offers
Evaluation
Technical acceptability
Tests

Agency did not give either insufficient or too much weight to research and development contract test data in evaluating proposals submitted on request for proposals (RFP) for production quantity, where the RFP indicated proposals would be evaluated on compliance with RFP requirements as verified by test data or analyses.

PROCUREMENT
Competitive Negotiation
Offers
Risks
Evaluation
Technical acceptability

Where a request for proposals (RFP) provides that extra credit will be given in assessing risk to offerors who contractually commit to performance in excess of RFP technical requirements, source selection authority may reasonably consider such contractual commitments in making award selection.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Weighting

In a negotiated procurement, agency is not required to make award to the low-priced acceptable offeror, regardless of relative technical merit, unless the solicitation states that price will be the award determinative factor.

PROCUREMENT

B-232970.2 Feb. 7, 1989

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Dismissal of protest as untimely is affirmed where allegation that contracting agency improperly waived balance of payments provision in a request for proposals (RFP) was filed after the closing date for receipt of proposals.

PROCUREMENT

B-233511, et al.

Socio-Economic Policies Feb. 7, 1989

Small businesses 89-1 CPD 125

Disadvantaged business set-asides

Preferences

Applicability

Department of Defense's requirement that small disadvantaged business (SDB) concerns be regular dealers in order to be eligible for an SDB evaluation preference reflects a logical means of promoting SDB contracting without leaving the preference program open to abuse by other than legitimate SDB concerns, and is within the agency's authority to impose.

PROCUREMENT

Socio-Economic Policies

Small businesses

Disadvantaged business set-asides

Preferences

Eligibility

Agency reasonably determined that a small disadvantaged business (SDB) was not a regular dealer in perishable food items, and thus was not eligible for SDB evaluation preference under solicitations for these goods, where record indicates that the SDB does not maintain a true inventory of these items from which sales are made on a regular basis.

PROCUREMENT

B-233006 Feb. 8, 1989

Bid Protests

89-1 CPD 126

Premature allegation

GAO review

Contention that contracting agency will improperly withdraw small business set-aside is premature and will not be considered where contention is based upon presumption that agency will act unreasonably.

PROCUREMENT

Competitive Negotiation

Offers

Price disclosure

Allegation substantiation

Evidence sufficiency

Where protester presents no evidence that agency use of commercial tugboat operator tariff and erroneous release of government estimate were intended to establish a price goal for offerors, protest alleging use of auction techniques is denied.

PROCUREMENT

Competitive Negotiation

Offers

Risks

Pricing

Where protester fails to show that evaluation scheme designed to aid agency determination of price reasonableness places undue risk upon offerors or will not result in lowest cost to government in terms of actual performance, protest against pricing structure and evaluation scheme is without merit.

PROCUREMENT

Specifications

Ambiguity allegation

Specification interpretation

B-233006 Con't

Feb. 8, 1989

Request for proposals provision allowing intermittent fendering of tugs is not ambiguous where it is not susceptible of more than one interpretation.

PROCUREMENT

Noncompetitive Negotiation 89-1 CPD 127

Contract awards

Sole sources

Propriety

B-233052 Feb. 8, 1989

Sole-source award is unobjectionable where the agency complied with statutory requirements for written justification and publication of notice in the Commerce Business Daily (CBD) and agency reasonably determined that only one source could supply the desired item. Protester, who submitted response to CBD notice and solicitation failed to supplement its submission with technical data showing how it would meet detailed requirements of the solicitation even though it was specifically requested to do so.

PROCUREMENT B-233118 Feb. 8, 1989
Contractor Qualification 89-1 CPD 128
Responsibility
Contracting officer findings
Affirmative determination
GAO review

PROCUREMENT
Contractor Qualification
Responsibility criteria
Organizational experience

Protest that awardee did not meet definitive responsibility criterion concerning experience in performing similar services is denied where record indicates awardee submitted adequate objective evidence of its past experience from which the contracting officer could reasonably conclude that criterion had been met.

PROCUREMENT B-233212 Feb. 8, 1989
Competitive Negotiation 89-1 CPD 129
Technical evaluation boards
Bias allegation
Allegation substantiation
Evidence sufficiency

Protest that contracting officials were biased in favor of incumbent firm is denied where allegation is based solely on inference or supposition.

PROCUREMENT B-233212 Con't
Socio-Economic Policies Feb. 8, 1989
Small businesses
Competency certification
Applicability

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Eligibility
Criteria

Certificate of Competency (COC) procedures do not apply where a small business firm's offer in a negotiated procurement is considered weak under technical evaluation factors relating to experience and personnel qualifications, since the COC program is reserved for reviewing responsibility matters, not the comparative evaluation of technical proposals.

PROCUREMENT B-234292 Feb. 8, 1989
Socio-Economic Policies 89-1 CPD 130
Small businesses
Size determination
Pending protests
Contract awards

Protest of agency's award of a contract while protest challenging the size status of the awardee was still pending is dismissed where the Small Business Administration had determined that the awardee is a small business concern for this procurement pursuant to a size challenge by another bidder.

PROCUREMENT**B-231124.2 Feb. 9, 1989****Bid Protests****89-1 CPD 131****GAO procedures****GAO decisions****Reconsideration**

Request that General Accounting Office reconsider dismissal of protest against disclosure of data as untimely is denied where, even if protest is timely, protest would not be for consideration under bid protest function, but rather as a claim or action against the government for damages for administrative or judicial resolution.

PROCUREMENT**Bid Protests****Information request****Timeliness**

If protester viewed certain documentation in the possession of the agency as essential to its ability to compete, the firm should have pursued release of the documentation under the Freedom of Information Act at the outset of the procurement.

PROCUREMENT**B-232251.3 Feb. 9, 1989****Socio-Economic Policies****89-1 CPD 132****Small businesses****Competency certification****Bad faith****Allegation substantiation**

Protester has not shown that the agency's certificate of competency referral to the Small Business Administration, which essentially communicated the agency's version of a disputed contract performance history, was fraudulent or made in bad faith.

The record indicates that the Small Business Administration considered all information provided to it by the protester during the certificate of competency proceeding; thus, the protester's argument that vital information was not considered is without merit.

PROCUREMENT **B-232251.3 Con't**
Socio-Economic Policies **Feb. 9, 1989**
Small businesses
Competency certification
Information disclosure

During a certificate of competency (COC) proceeding, protester was given sufficient notice that its contract performance history was under review and was given an adequate opportunity to, and did in fact, present information on its own behalf with regard to that performance history to the Small Business Administration, which then considered the information in its COC deliberations.

Agency was not obligated to furnish the protester with a copy of a preaward survey report for use during a certificate of competency proceeding and, in any event, protester was not prejudiced by not receiving a copy of the report until the proceeding had been concluded.

PROCUREMENT **B-232646.7 Feb. 9, 1989**
Bid Protests **89-1 CPD 133**
GAO procedures
Protest timeliness
10-day rule

Protest alleging that the contracting officer gave the protester an incorrect interpretation of a solicitation provision and thereby caused the protester to offer a higher price than it otherwise would have offered is untimely where the protester filed the protest more than 10 days after the protester knew its basis for protest.

PROCUREMENT

B-232681.2; B-232681.3

Competitive Negotiation

Feb. 9, 1989

Offers

89-1 CPD 134

Evaluation**Options****Prices**

An option in the incumbent's contract for pistols properly may be used for comparison to proposals received in a competitive procurement to decide whether it is in the government's interest to award a new contract under the procurement or to obtain additional pistols by exercising the option in the incumbent's contract, where the contracting agency essentially will be treating the incumbent contractor the same as all other offerors during the negotiation phase of the procurement.

PROCUREMENT**Competitive Negotiation****Requests for proposals****Additional work/quantities****Additional costs****Propriety**

Where the 1987 Department of Defense Appropriations Act specifically directs the Army to conduct a new competition to acquire additional quantities of pistols, the Army may not properly assess all offerors except the incumbent contractor certain "generic" and other costs (costs related to changing from the incumbent contractor to a new contractor) in the evaluation of proposals for award, where: (1) the costs are so high (almost one-half million dollars) that full and open competition may not be realized; and (2) the incumbent was awarded the contract as the result of an evaluation that the General Accounting Office found was flawed.

PROCUREMENT B-232986, et al.
Contractor Qualification Feb. 9, 1989
Responsibility 89-1 CPD 135
Contracting officer findings
Negative determination
Criteria

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability
Information submission

Contracting agency reasonably found that bidder was nonresponsible based on a finding that the bidder's individual sureties on its bid bonds were unacceptable since the contracting agency was unable to verify the financial resources of each surety and doubt was cast on the sureties' net worth.

PROCUREMENT B-233040 Feb. 9, 1989
Competitive Negotiation 89-1 CPD 136
Discussion
Misleading information
Allegation substantiation

Agency may have inadvertently misled protester during discussions where protester reasonably concluded that cited deficiency related to different portion of its proposal than portion intended by agency.

PROCUREMENT
Specifications
Ambiguity allegation
Specification interpretation

Specification is ambiguous where protester and agency both have reasonable interpretations of the specification and both interpretations are consistent with the solicitation read as a whole.

PROCUREMENT**B-233101 Feb. 9, 1989****Bid Protests****89-1 CPD 137****GAO procedures****Interested parties****Direct interest standards**

Protester, the third low bidder, has the direct economic interest necessary to be an interested party entitled to challenge the contracting agency's decision to allow the awardee to correct an apparent mistake in its bid since, if the protest were sustained, agency would be required to determine whether to allow second low bidder to withdraw its bid based on claimed mistake; if withdrawal were permitted, protester would be in line for award.

PROCUREMENT**Sealed Bidding****Bids****Error correction****Low bid displacement****Propriety**

Where correction of mistake results in displacement of a lower bid, contracting agency improperly permitted awardee to correct mistake in its bid, since clear and convincing evidence establishing the bid actually intended could not be determined substantially from the invitation and the bid itself.

PROCUREMENT**B-233157 Feb. 9, 1989****Sealed Bidding****89-1 CPD 138****Low bids****Error correction****Price adjustments****Propriety**

Protest of the contracting agency's decision to deny upward price correction of allegedly mistaken low bid is sustained where the worksheets submitted to support the allegation of mistake establish the intended bid by clear and convincing evidence.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-233055; B-233056
Feb. 10, 1989
89-1 CPD 139

Protest of solicitation deficiencies is academic where contracting agency issues a corrective amendment.

PROCUREMENT
Bid Protests
Non-prejudicial allegation
GAO review

Contention that solicitation amended six times is a "paste up" document which ought to be "reprinted" provides no legal basis for objection to the procurement, since there is no legal requirement that an entire solicitation be reprinted when there have been a number of amendments to it and where each amendment clearly indicated which provisions of the IFB were changed.

PROCUREMENT
Sealed Bidding
Invitations for bids
Terms
Risks

Fact that solicitation for routine family housing maintenance does not provide separate bid line items for maintenance management services and for each of three types of service calls does not render solicitation improper where the management service duties are described in the solicitation and statistical information as to the number of each type of service call performed during the prior year is provided to bidders; a solicitation need not be so structured as to eliminate all risk, and agency could reasonably conclude that, based on the information provided, bidders could project their expected costs and include them in their prices for maintenance service.

PROCUREMENT
Special Procurement
Methods/Categories
Service contracts
Merger
Construction o

Special Procurement

Methods/Categories

Service contracts

Merger

Construction contracts

B-233055; B-233056 Con't

Feb. 10, 1989

Protest that solicitation for routine maintenance services for military family housing should be consolidated with solicitation for construction services for housing repairs incident to change of occupancy is denied where protester does not show that contracting agency abused the discretion committed to it in its choice of method of procurement.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Personnel

Work schedules

B-233221 Feb. 10, 1989

89-1 CPD 140

Protest that agency relaxed a solicitation requirement that Project Director be assigned on an 80 percent time basis by accepting a proposal offering to perform with a Project Director on only a 53 percent basis is denied where record shows that the outcome of the competition would not have been different had the agency informed the protester of the relaxed requirement.

PROCUREMENT

Sealed Bidding

Invitations for bids

Evaluation criteria

Prices

Options

B-233563 Feb. 10, 1989

89-1 CPD 141

The inclusion of two 1-year options in a solicitation for transportation and storage services is proper where the agency determines in accordance with the applicable regulation that it anticipated a need for the same services in the future.

PROCUREMENT **B-234312 Feb. 10, 1989**
Socio-Economic Policies **89-1 CPD 142**
Small businesses
Size determination
Pending protests
Contract awards

A contracting officer is not required to delay a contract award until a protester's appeal to the Small Business Administration (SBA) from an SBA size determination has been decided.

PROCUREMENT **B-233119 Feb. 13, 1989**
Noncompetitive Negotiation **89-1 CPD 144**
Contract awards
Sole sources
Propriety

Sole source award on urgency grounds limited to only known firm capable of providing currently needed safety item and limited to urgently needed quantity is unobjectionable.

PROCUREMENT **B-233140 Feb. 13, 1989**
Sealed Bidding **89-1 CPD 145**
Bid guarantees
Sureties
Acceptability

Procuring agency reasonably rejected bid for nonresponsibility of individual sureties on bid bond where the sureties' integrity was called into question because both were on the current General Services Administration list of debarred bidders.

PROCUREMENT	B-233238	Feb. 13, 1989
Sealed Bidding	89-1	CPD 146
Hand-carried bids		
Late submission		
Acceptance criteria		

PROCUREMENT	B-233463.2	Feb. 13, 1989
Bid Protests	89-1	CPD 147
GAO procedures		
GAO decisions		
Reconsideration		

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

D-25

PROCUREMENT

Sealed Bidding

Bid guarantees

Responsiveness

Liability restrictions

B-233463.2 Con't

Feb. 13, 1989

Federal Acquisition Regulation provision which requires acceptance of a bid guarantee which is in an amount less than required but equal to or greater than the difference between that bid and the next acceptable bid does not apply where bid guarantee is otherwise defective due to lack of acceptable individual sureties.

PROCUREMENT

Sealed Bidding

Bid guarantees

Sureties

Acceptability

Information submission

Where the protester was rejected as nonresponsible for failing to provide the contracting officer with sufficient information to determine whether the sureties on the protester's individual surety bid bond were acceptable and the record shows the nonresponsibility determination was reasonably based, rejection of the protester's bid was proper.

PROCUREMENT

Socio-Economic Policies

Small businesses

Competency certification

Applicability

An agency is not required to refer determination of nonresponsibility of a bidder to the Small Business Administration for review under the Certificate of Competency procedures when the rejection of the bidder is based on the unacceptability of individual sureties.

PROCUREMENT	B-233467	Feb. 13, 1989
Competitive Negotiation	89-1	CPD 148
Hand-carried offers		
Late submission		
Acceptance criteria		
Acceptance		

Protest that hand-carried proposal delivered to a location other than that specified in solicitation was not late because it was in the possession of the federal government before the time proposals were due, and that the agency's failure to assure that the proposal was forwarded to the proper location constituted mishandling such that the proposal should be deemed timely, is denied; to be timely, a proposal must be received in the place designated for the receipt of proposals by the required time, and agency's failure to forward proposal delivered to other than the specified location does not constitute mishandling.

PROCUREMENT	B-233642	Feb. 13, 1989
Bid Protests	89-1	CPD 149
Private disputes		
GAO review		

General Accounting Office will not consider protest that protester lost the competition because competitor failed to deliver a technical data package to protester in a timely manner as specified by a private contract between the parties and that the price quoted by the competitor for materials was higher than that quoted by the competitor to the government in contravention of the same private contract. Since the government had no part in the competitor's actions or the protester's business decisions, the matter essentially involves a dispute between private parties, and therefore is not a matter to be resolved through the bid protest process.

PROCUREMENT **B-234330 Feb. 13, 1989**
Competitive Negotiation 89-1 CPD 150
Offers
Late submission
Acceptance criteria

Where a delay in the delivery of a proposal sent by commercial carrier is due to adverse weather conditions and not improper government handling, agency properly rejected the proposal as late.

PROCUREMENT **B-232966.2 Feb. 14, 1989**
Bid Protests 89-1 CPD 151
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

General Accounting Office (GAO) will not invoke the significant issue exception in Bid Protest Regulations in order to review an untimely protest, where the protest does not raise an issue of widespread interest to the procurement community and raises an issue of a type which GAO has previously considered on the merits.

PROCUREMENT **B-232999 Feb. 14, 1989**
Competitive Negotiation 89-1 CPD 152
Contract awards
Administrative discretion
Cost/technical tradeoffs
Cost savings

Protest is sustained where contracting officer has not fully justified her determination that the proposals of two competing offerors were technically equal and that award could, therefore, be made to the lower cost offeror. Rather, the evaluation record indicates that the awardee's proposal was not technically equivalent to the protester's proposal.

PROCUREMENT **B-233086; B-233087**
Contractor Qualification **Feb. 14, 1989**
Responsibility **89-1 CPD 153**
Contracting officer findings
Negative determination
Criteria

Protester was properly found nonresponsible where it failed to provide adequate evidence to permit a finding that the issuer of its letter of credit was financially sound and the record shows that the contracting officer's nonresponsibility determination was reasonably based.

PROCUREMENT
Contractor Qualification
Responsibility
Information
Submission time periods

An agency is not required to delay award indefinitely until a bidder cures the causes of its nonresponsibility. Rejection of protester's bid is proper where the agency set a reasonable deadline for receipt of additional information concerning the bidder's responsibility, by which time none had been submitted, and where protester's additional information not submitted until the day the agency's bid protest report was transmitted to the General Accounting Office and was the same as data already considered and found insufficient by the contracting officer.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

B-233086; B-233087 Con't
Feb. 14, 1989

Where the issuer of a letter of credit submitted as a bid guarantee is neither a bank nor an otherwise regulated financial institution it is appropriate for a contracting agency to examine not only the form and content of the letter of credit, but also to ascertain the financial status of the issuer.

Fact that one contracting agency may have accepted a letter of credit from the protester's surety in an earlier procurement does not compel another agency to accept a letter of credit from the same surety where based on the information presented to it the second agency reasonably determined the surety to be unacceptable.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-233541 Feb. 14, 1989
89-1 CPD 154

Protest to the General Accounting Office filed more than 10 working days after notice of initial adverse agency action on its agency-level protest is untimely.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-234121.2 Feb. 14, 1989
89-1 CPD 155

Protest filed more than 10 working days after protester learns of basis for protest is untimely and will not be considered.

PROCUREMENT	B-233085; B-233085.2
Bid Protests	Feb. 15, 1989
Allegation	89-1 CPD 156
substantiation	
Burden of proof	

Allegation that awardee's proposals did not comply with solicitation requirements is without merit where the record shows that the agency reasonably determined that the proposals in fact complied with those requirements.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest alleging that the Service Contract Act (SCA) is applicable to a procurement is untimely where the request for proposals did not contain SCA provisions and the issue was not raised prior to the closing date for receipt of initial proposals.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

General Accounting Office does not review a protest of an agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith, or failure to apply definitive evaluation criteria contained in the solicitation.

PROCUREMENT B-233113; B-233113.2
Competitive Negotiation Feb. 15, 1989
Contract awards 89-1 CPD 158
Administrative discretion

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Selection of a proposal for instructional services that assumed a higher level of instructor productivity than agency had originally estimated was necessary was reasonable where record shows that the selection was made based on an explanation of the higher productivity level contained in the proposal.

PROCUREMENT
Competitive Negotiation
Contract awards
Administrative discretion
Cost/technical tradeoffs
Cost savings

Source selection authority reasonably selected for award lower-priced, lower-scored proposal where he determined that lower-scored proposal was in fact essentially equivalent technically to the higher-scored one and difference in price was significant.

PROCUREMENT
Competitive Negotiation
Offers
Risks
Evaluation
Technical acceptability

Decision not to award to lowest-priced offeror was reasonable where source selection authority determined that the proposal represented a significant performance risk and that the technical superiority of another offeror's proposal outweighed its cost premium.

PROCUREMENT **B-233115 Feb. 15, 1989**
 Competitive Negotiation **89-1 CPD 159**
 Discussion
 Adequacy
 Criteria

Where an agency led an offeror into the areas of its proposal that were technically unacceptable and afforded the offeror an opportunity to submit a revised proposal, meaningful discussions were conducted.

PROCUREMENT
 Competitive Negotiation
 Offers
 Evaluation
 Administrative discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

PROCUREMENT **B-233144 Feb. 15, 1989**
 Bid Protests **89-1 CPD 160**
 GAO procedures
 Protest timeliness
 Apparent solicitation improprieties

Allegations, raised for the first time after awards have been made, that a solicitation improperly was not conducted as a multiple award schedule (MAS) solicitation, are untimely, where it should have been clear from an amendment to the solicitation issued prior to the submission of initial proposals that the solicitation was not intended to be a MAS procurement.

PROCUREMENT **B-233144 Con't**
Special Procurement **Feb. 15, 1989**
Methods/Categories
Federal supply schedule
Multiple/aggregate awards
Mandatory use
Allegation substantiation

A protest that the agency improperly failed to make multiple awards under a federal supply schedule procurement is denied where the record shows that nothing in the solicitation required that multiple awards be made, and that the agency's determination of the number of awards to make (or whether to make a single award) for a particular geographical area was reasonably based on its assessment of the offerors' capacity to meet anticipated requirements.

PROCUREMENT **B-233282 Feb. 15, 1989**
Competitive Negotiation **89-1 CPD 161**
Contract awards
Administrative discretion
Cost/technical tradeoffs
Technical superiority

Award to higher priced, higher technically rated offeror is not objectionable where technical considerations substantially outweighed cost in solicitation award criteria, and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

Point ratings

Where the evaluation criteria, listed in descending order of importance, provided that the personnel factor had more than twice the importance of any other evaluation factor, and the agency nevertheless evaluated the personnel factor at 3.98 times the weight of the next important factor, the protester was not prejudiced where the record indicates that evaluation and rescoring of the proposals in a manner which accurately reflected the solicitation's stated evaluation scheme would not have affected the outcome of the award.

Evidence sufficiency

Disparity in scores among evaluators does not alone signify that the evaluation of proposals was unreasonable or biased where there is no evidence in the record to suggest that the technical scoring by the individual evaluators reflected anything other than their reasonable judgments as to the relative merits of a given proposal.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-233318 Feb. 15, 1989

89-1 CPD 162

Where request for proposals specifically states that offerors' proposed employee incentive program is the second most important evaluation factor and that cost is the least important factor, protest that consideration of incentive plan is improper because it constitutes an unnecessary additional cost is untimely when filed after the closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

Agency properly awarded contract to higher-cost, technically superior offeror where award on that basis was consistent with solicitation's evaluation criteria and the agency reasonably found that the difference in technical merit outweighed the cost difference.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Evaluation criteria

Sufficiency

An agency need not specifically identify detailed aspects of the evaluation criteria as long as they are reasonably related to the announced criteria.

PROCUREMENT**B-233537 Feb. 15, 1989****Sealed Bidding****89-1 CPD 163****Bid guarantees****Sureties****Acceptability**

A bid is properly rejected as nonresponsive where the bid bond furnished with the bid listed one surety company on the face of the bond, but the corporate seal and the attached power-of-attorney for the signer of the bond is from another surety, since it is unclear from the bid documents, including the bond, whether either surety is bound.

PROCUREMENT**B-233605 Feb. 15, 1989****Socio-Economic Policies****89-1 CPD 164****Small business set-asides****Use****Administrative discretion**

Protest that a greater percentage of line items under a solicitation should be set aside for small business concerns is without merit where only one small business had submitted a reasonably priced bid for various line items under the preceding procurement for the same requirement, and the agency did not expect to obtain adequate price competition and to make award at a reasonable price for those items.

PROCUREMENT**B-233117 Feb. 16, 1989****Sealed Bidding****89-1 CPD 165****Hand-carried bids****Late submission****Acceptance criteria**

Where there is no evidence that commercial carrier attempted to deliver protester's bid to office designated in invitation for bids but was directed to the mailroom instead, we do not find that government impropriety was the paramount cause of its late receipt.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Responsiveness

B-233117 Con't
Feb. 16, 1989

Bidder's failure to acknowledge amendment that had no material impact on some line items in solicitation which provided for multiple awards did not render its low bid nonresponsive for those items and therefore rejection of that portion of the bid was improper.

PROCUREMENT
Competitive Negotiation
Contract awards
Administrative discretion

B-233326; B-233326.2
Feb. 16, 1989
89-1 CPD 166

Protest that contracting officer is provided too much discretion in selecting the awardee in a negotiated procurement is denied because the contracting officer is allowed to exercise discretion in accordance with the evaluation language and criteria stated in the solicitation in determining which award will be most advantageous to the government.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Prices

Protest that evaluation criteria relating to price are ambiguous is denied since solicitation advises offerors of the broad scheme of scoring to be employed and gives reasonably definite information concerning the relative importance of the evaluation factors in relation to each other.

PROCUREMENT	B-233326; B-233326.2	Con't
Competitive Negotiation	Feb. 16, 1989	
Requests for proposals		
Options		

Protest that solicitation failed to include options is denied where the contracting officer determined it was not in the government's best interest to include options.

PROCUREMENT

Competitive Negotiation

Use

Criteria

Agency decision to use negotiation procedures, in lieu of sealed bidding procedures, to acquire refuse collection and disposal services is justified where the contracting officer determines that discussions are necessary to ensure that offerors fully understand the performance methods, manning and equipment requirements necessary to adequately perform the contract.

PROCUREMENT	B-233460	Feb. 16, 1989
Bid Protests	89-1	CPD 167
GAO procedures		
Interested parties		
Direct interest standards		

A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. Once an offeror is properly found to be outside of the competitive range, it cannot be in line for award.

PROCUREMENT **B-233460 Con't**
Competitive Negotiation **Feb. 16, 1989**
Offers
Competitive ranges
Exclusion
Administrative discretion

Contracting agency reasonably excluded protester's proposal from the competitive range where the solicitation stated that offerors' costs would be considered secondary in importance in relation to technical factors, and the protester's proposal was ranked sixth of six technically.

PROCUREMENT **B-233115.3 Feb. 17, 1989**
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest concerning alleged unfair competitive advantage is dismissed as untimely when filed more than 10 working days after the protester knew or should have known the basis of protest.

PROCUREMENT **B-233240 Feb. 17, 1989**
Noncompetitive Negotiation 89-1 CPD 169
Use
Approval
Justification

Procuring agency improperly used a specific make and model specification to order tape recorders under a nonmandatory schedule contract where the agency did not comply with the regulatory requirement to justify, certify and obtain appropriate approval before using noncompetitive procedures.

PROCUREMENT B-233240 Con't
Special Procurement Feb. 17, 1989
Methods/Categories
Federal supply schedule
Purchases
Contractors
Notification

Protest that agency improperly denied the protester the opportunity to compete for a contract award for tape recorders is denied where the agency ordered the recorders from a General Services Administration nonmandatory telecommunications schedule contract after publishing notice of its intent to do so in the Commerce Business Daily and waiting 15 calender days after publication before placing the order.

PROCUREMENT B-233350 Feb. 17, 1989
Sealed Bidding 89-1 CPD 170
Invitations for bids
Cancellation
Justification
Ambiguous specifications

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification
Minimum needs standards

Protest against cancellation of solicitation after bid opening is denied where the specifications were ambiguous and award would not meet the government's minimum needs. This circumstance constitutes a compelling reason for canceling the solicitation.

PROCUREMENT **B-233455 Feb. 17, 1989**
Specifications **89-1 CPD 171**
Minimum needs standards
Competitive restrictions
Design specifications
Justification

Protest that solicitation specifications for air compressors are overly restrictive of competition is denied where the record supports the contracting agency's determination that the specifications are necessary to meet its minimum needs.

PROCUREMENT **B-233547 Feb. 17, 1989**
Competitive Negotiation **89-1 CPD 172**
Competitive advantage
Incumbent contractors

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Design specifications
Burden of proof

Protest that specifications limiting the new construction of satellite earth terminals unduly restricts competition is denied where the agency explains the elimination is necessary to meet its minimum needs and the protester fails to show that the restriction is clearly unreasonable. Firms with existing satellite earth terminals do not have an unfair competitive advantage because the alleged advantage is not the result of preference or unfair action by the government.

PROCUREMENT
Bid Protests
Definition

B-233935.2 Feb. 17, 1989
89-1 CPD 173

Protester's letter to agency suggesting possible improvements to solicitation, received by agency before the closing date, does not constitute a protest because it lacks any expression of dissatisfaction indicating intent to protest.

PROCUREMENT
Special Procurement
Methods/Categories
In-house performance
Administrative appeals

B-234488 Feb. 17, 1989
89-1 CPD 174

Protest concerning validity of cost comparison made pursuant to Office of Management and Budget Circular A-76 will not be considered where the protester has not exhausted the administrative appeals procedure provided by the agency.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-233092 Feb. 21, 1989
89-1 CPD 175

Protest that protester had less time to prepare its proposal because best and final offers (BAFO) request arrived late is untimely as protest was not filed prior to date for receipt of BAFOs.

Protest that best and final offers (BAFO) request should not have been contained in same letter transmitting technical and management questions is untimely since it was filed after closing date for BAFOs. In any event, the Federal Acquisition Regulations do not preclude this practice.

PROCUREMENT

**Competitive Negotiation
Discussion
Adequacy
Criteria**

B-233092 Con't

Feb. 21, 1989

Where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible score. That a third of an agency's technical questions in its best and final offers request letter merely asked for "clarification and elaboration" of certain areas (while the other questions were more detailed) does not mean that the discussions were not meaningful; the questions were sufficient to point the protester to the areas of its proposal which could have used strengthening.

PROCUREMENT

**Competitive Negotiation
Offers
Pre-award periods
Value engineering
Change orders**

PROCUREMENT

**Contract Management
Contract administration
Value engineering
Change orders
Use**

Value engineering change proposals (VECP) are proposals made to change existing contracts, not proposals made before a contract is awarded. There is no duty to consider a VECP prior to award.

PROCUREMENT	B-233092	Con't
Competitive Negotiation	Feb. 21,	1989
Requests for proposals		
Evaluation criteria		
Cost/technical tradeoffs		
Weighting		

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the solicitation specifies that cost is determinative.

PROCUREMENT	B-233134	Feb. 21, 1989
Sealed Bidding	89-1	CPD 216
Bids		
Responsiveness		
Blanket offers of compliance		

A blanket promise to supply customized equipment which will meet specification requirements is an insufficient substitute for required descriptive literature.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Descriptive literature
Adequacy

Where invitation for bids for sophisticated X-ray imaging system contains standard descriptive literature clause, rejection of protester's bid, which admittedly failed to contain descriptive literature on a key component of the system, was proper since the government's minimum needs were clearly identified and enumerated in the solicitation and standard clause provides for rejection of a bid for the failure of descriptive literature to show that the product offered conforms to the solicitation requirements.

PROCUREMENT B-233141 Feb. 21, 1989
Competitive Negotiation 89-1 CPD 176
Below-cost offers
Acceptability

PROCUREMENT
Competitive Negotiation
Offers
Cost realism
Evaluation
Administrative discretion

There is no requirement for a cost realism analysis before the award of a competitive, fixed-price contract, and there is no legal basis to challenge a below-cost award to a contractor which has been determined responsible by the contracting officer.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

PROCUREMENT
Contractor Qualification
Responsibility/responsiveness distinctions

When responsibility-type factors such as experience are included as technical evaluation factors in a request for proposals, they do not constitute definitive responsibility criteria. The General Accounting Office will review the agency's evaluation of them in the same manner as it does any other technical evaluation factor, i.e., to determine whether the evaluation was reasonable and complied with applicable statutes and regulations.

PROCUREMENT **B-233141 Con't**
Competitive Negotiation **Feb. 21, 1989**
Requests for proposals
Amendments
Evaluation criteria
Modification

Although contracting agency should have amended solicitation to express reduced experience requirements included as a technical evaluation factor, the failure to do so did not prejudice the protester, whose competitive standing was not adversely affected as a result of the reduction.

PROCUREMENT **B-233155 Feb. 21, 1989**
Bid Protests **89-1 CPD 177**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that solicitation improperly failed to establish quantifiable criteria for judging "substantially equal" proposals is untimely, where the protest was filed after the closing date for receipt of initial proposals.

PROCUREMENT
Competitive Negotiation
Contract awards
Administrative discretion
Cost/technical tradeoffs
Technical superiority

In a negotiated procurement, award to a higher priced, higher technically rated offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and the agency reasonably concluded that the awardee's superior proposal was most advantageous to the government.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

B-233167 Feb. 21, 1989
89-1 CPD 178

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Determination criteria

Agency determination to reject bid as nonresponsive merely because one of bidder's sureties is a government employee is improper since this would not prevent the contracting officer from satisfactorily obtaining performance on a defaulted contract by recourse to this surety.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-233492 Feb. 21, 1989
89-1 CPD 179

Allegation concerning awardee's proposal's conformance to solicitation's technical specifications is dismissed as untimely where not raised within 10 working days of when protester knew or should have known of protest basis.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Agency's technical evaluation will not be questioned absent clear evidence that such evaluation was unreasonable or not in accordance with solicitation's stated evaluation criteria.

PROCUREMENT **B-233492 Con't**
Contractor Qualification **Feb. 21, 1989**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Challenge to agency's affirmative determination of responsibility is dismissed where there is no allegation of possible fraud or bad faith on the part of procuring officials or failure to apply definitive responsibility criteria.

PROCUREMENT **B-233620 Feb. 21, 1989**
Sealed Bidding **89-1 CPD 180**
Bonds
Justification
GAO review

Protest that bonding requirements in an invitation for bids are unduly restrictive of competition is without merit where the protester fails to establish that the determination to require bonds was unreasonable or made in bad faith; contractor operation of government-owned warehouse and the agency's requirement for the uninterrupted, efficient performance of warehouse services in support of a medical center provided a reasonable basis for imposing bonding requirements.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

B-234117 Feb. 21, 1989
89-1 CPD 181

Protest that awardee's use of individual sureties was unacceptable to meet the bonding requirement on a solicitation for repair of marine vessels is dismissed where Federal Acquisition Regulation § 28.201 provides that individual sureties are an acceptable form of security for bid bonds, except where prohibited by law or regulation, and the protester did not identify a specific law or regulation that prohibits their use for this procurement.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

B-234193 Feb. 21, 1989
89-1 CPD 182

The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the procurement officials or that definitive responsibility criteria in the solicitation were misapplied.

PROCUREMENT
Competitive Negotiation
Contract awards
Government delays
Procedural defects

B-234395 Feb. 21, 1989
89-1 CPD 183

An agency's delay in awarding a contract is purely a matter of procedure which alone does not provide a basis of protest because it does not affect the validity of a procurement.

PROCUREMENT**B-232727.3 Feb. 22, 1989****Bid Protests****89-1 CPD 184****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration of protest against allegedly noncompetitive award dismissed as academic is denied where agency cancels request for proposals (RFP) in order to revise requirements and reissue RFP on a more competitive basis and protester has not shown that corrective action was unreasonable.

PROCUREMENT**B-233090 Feb. 22, 1989****Competitive Negotiation****89-1 CPD 185****Discussion****Adequacy****Criteria**

Protest is sustained where agency failed to discuss with competitive range offerors the number of aircraft to be deployed under cost-type contract for aircraft maintenance in spite of evidence in the proposals that the offerors had widely divergent conceptions of the number of aircraft to be deployed and of the costs required to perform the contract.

PROCUREMENT B-233090 Con't
Competitive Negotiation Feb. 22, 1989
Offers
Cost realism
Evaluation errors
Allegation substantiation

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Cost estimates

Contracting agency does not satisfy the requirement for a cost realism analysis before the award of a cost-type contract for aircraft maintenance where, in spite of a wide range of cost estimates and other evidence that offerors misunderstood the number of aircraft to be deployed on the contract, agency merely scored cost estimates as submitted without considering the various elements of the cost estimates, in particular the number of aircraft to be deployed.

PROCUREMENT B-233208 Feb. 22, 1989
Competitive Negotiation 89-1 CPD 187
Contract awards
Initial-offer awards
Propriety
Price reasonableness

Contracting agency improperly made award on the basis of initial proposals without discussions, where the record does not clearly show that the contract awarded will result in the lowest overall cost to the government.

PROCUREMENT	B-233296	Feb. 22, 1989
Competitive Negotiation	89-1	CPD 189
Offers		
Competitive ranges		
Inclusion		
Administrative discretion		

Where contracting agency receives only two proposals, and exclusion of one proposal would essentially result in a sole-source procurement, contracting agency reasonably included the second proposal within the competitive range even if the proposal had serious deficiencies.

PROCUREMENT	B-233377.2	Feb. 22, 1989
Competitive Negotiation	89-1	CPD 190
Offers		
Competitive ranges		
Exclusion		
Administrative discretion		

Protest of exclusion of proposal from the competitive range is denied where the protester has not shown that the technical evaluation finding its proposal unacceptable was unreasonable.

PROCUREMENT	B-233452	Feb. 22, 1989
Competitive Negotiation	89-1	CPD 191
Contract awards		
Administrative discretion		
Cost/technical tradeoffs		
Technical superiority		

Award to a higher-priced, technically superior offeror was not improper where the solicitation specifically advised offerors that technical factors were significantly more important than cost, and the agency's decision that the offer was worth the slight price premium was not unreasonable.

PROCUREMENT**Bid Protests****GAO procedures****Protest timeliness****10-day rule****Effective dates****B-233503 Feb. 22, 1989****89-1 CPD 192**

Protest of the nonreceipt of a solicitation is timely even though filed more than 10 days after the closing date for proposals announced in the Commerce Business Daily where the actual closing date was almost 2 months later and the protester filed its protest within 10 days of the actual closing date.

PROCUREMENT**Competitive Negotiation****Requests for proposals****Competition rights****Contractors****Exclusion**

Where the agency's actions resulted in adequate competition and reasonable prices and the record indicates that the protester may have contributed to its exclusion from the solicitation mailing list by failing to submit a required form, protest that the agency improperly excluded the protester from the competition is denied.

PROCUREMENT**Bid Protests****GAO procedures****Interested parties****Subcontractors****B-233608.2 Feb. 22, 1989****89-1 CPD 193**

A subcontractor under an existing contract is not an interested party under General Accounting Office's Bid Protest Regulations for the purposes of maintaining a protest against a new solicitation on the basis that the requirement should have been obtained under the existing contract.

PROCUREMENT

B-233608.2 Con't
Feb. 22, 1989

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest alleging that a solicitation's delivery schedule of 15 days was inappropriate is untimely where the requirement was apparent on the face of the solicitation and not protested until after award.

PROCUREMENT

B-234141.6 Feb. 22, 1989
89-1 CPD 194

Bid Protests

GAO procedures

Protest timeliness

Deadlines

Constructive notification

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Certified mail

Prior dismissal of protest as untimely filed is affirmed where protester argues that its late filing was excusable due to its lack of knowledge of Bid Protest Regulations and the alleged inefficiency of the Postal Service, because: (1) the protester was on constructive notice of Regulations, as they are published in the Federal Register, and (2) a protester acts at its own risk when it relies upon the mails, including certified mail, to deliver its protest.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Masters**

B-217790.2, et al.

Feb. 23, 1989

PROCUREMENT

**Sealed Bidding
Invitations for bids
Masters**

General Accounting Office has no comment on Federal Acquisition Regulation (FAR) case No. 88-49, a proposal to add provisions on the use of master solicitations at FAR sections 14.203-3 and 15.408(d).

PROCUREMENT

**Payment/Discharge
Federal procurement regulations/laws
Revision
Cost reimbursement**

General Accounting Office does not support a proposal in Federal Acquisition Regulation (FAR) case No. 88-33 to delete paragraph (h) from FAR section 31.205-1, the cost principle on public relations and advertising costs, because that provision serves to prevent the recovery of unallowable costs.

General Accounting Office supports a proposal in Federal Acquisition Regulation (FAR) case No. 88-54 to revise FAR section 31.205-33, the cost principle on professional and consultant services costs.

PROCUREMENT **B-233205 Feb. 23, 1989**
 Competitive Negotiation **89-1 CPD 195**
 Offers
 Competitive ranges
 Exclusion
 Administrative discretion

Although the General Accounting Office closely scrutinizes agency decisions that limit the competitive range to one proposal, such a result is unobjectionable where the only other proposal submitted was reasonably found to be so technically deficient that there was no reasonable expectation that it would be selected for award.

PROCUREMENT **B-233747 Feb. 23, 1989**
 Sealed Bidding **89-1 CPD 196**
 Bids
 Ambiguous prices
 Rejection
 Propriety

Where the low bid contains a price ambiguity, and where the bid is not low under one of two reasonable interpretations of the ambiguity, bid was properly rejected since ambiguously priced low bid may only be accepted if the ambiguity does not affect the evaluation, the bid is low under either interpretation of the ambiguity, and the low bidder agrees to accept the interpretation which is most favorable to the government.

PROCUREMENT **B-233778 Feb. 23, 1989**
 Bid Protests **89-1 CPD 197**
 GAO procedures
 Protest timeliness
 10-day rule

Protest filed more than 10 working days after basis of protest is known or should have been known is untimely.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

B-233778 Con't
Feb. 23, 1989

Where a firm certifies in its offer that it will supply a machine tool of United States origin, it is obligated to do so upon acceptance of the offer, and whether the firm meets its obligation is a matter of contract administration, which the General Accounting Office does not review.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

B-233815 Feb. 23, 1989
89-1 CPD 198

Protest by third lowest bidder against the proposed award of a contract to either of the lower bidders is dismissed where the protester fails to state a valid basis of protest against the intervening lower bidder; protester would not be next in line for award if its protest were sustained, and therefore is not an interested party eligible to protest award.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

Bid bond is sufficient, and bid thus is not nonresponsive, where the bond is properly executed and includes the required penal sum; whether individual sureties on bond have sufficient financial capacity is matter of responsibility generally not for review by General Accounting Office.

PROCUREMENT

B-231986.2 Feb. 24, 1989

Bid Protests

89-1 CPD 200

GAO decisions

Recommendations

Modification

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

Prior recommendation to reissue solicitation to resolve ambiguities is modified to permit agency to reissue requirement under section 8(a) of the Small Business Act because of reduced requirements and fact that needs can now be met by on-site training rather than at contractor's facility.

PROCUREMENT

B-232125.2 Feb. 24, 1989

Bid Protests

89-1 CPD 201

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration that does not show errors of fact or law in the prior decision and which basically reiterates arguments that were previously made and considered in the initial bid protest does not warrant reversal of the prior decision.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

B-232751.2; B-232751.3

Feb. 24, 1989

89-1 CPD 202

General Accounting Office (GAO) will not consider the merits of an untimely protest by invoking the significant issue exception in GAO's Bid Protest Regulations, where the protest does not raise an issue of first impression that would be of widespread interest to the procurement community.

PROCUREMENT

Bid Protests

Non-prejudicial allegation

GAO review

PROCUREMENT

Noncompetitive Negotiation

Contractors

Notification

Procedural defects

Protest against sole-source award prior to expiration of a 45-day period provided for expression of interest by other firms stated in Commerce Business Daily is denied where the protester has failed to show that it was prejudiced.

PROCUREMENT B-233207 Feb. 24, 1989
Competitive Negotiation 89-1 CPD 203
Contract awards
Propriety

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Determination criteria

Protest that awardee's bid is nonresponsive is denied where the protester does not show that the agency's determination that the awardee's offered product meets the requirements of the solicitation is wrong.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Where contracting officer determined prospective awardee was responsible based on a positive preaward survey finding the firm to have adequate financial resources and an adequate production capability to manufacture the required product, and there is no showing that the determination was made in bad faith, there is no basis to object to the agency's affirmative determination of responsibility.

PROCUREMENT**Sealed Bidding
Bids****B-233207 Con't****Feb. 24, 1989****Error correction****Low bid displacement****Propriety**

Contracting agency properly allowed correction of firm's bid, which resulted in displacement of other competitors as the low bidder, where the firm's intended bid price is clearly evidenced in the firm's entire bid, including documents furnished with descriptive literature.

PROCUREMENT**Competitive Negotiation
Requests for proposals
Evaluation criteria
Sufficiency****B-233274 Feb. 24, 1989****89-1 CPD 204**

Protest that insufficient information was available to enable the protester to determine whether it could meet security requirements for telecommunications services is denied where solicitation provides sufficient information to allow offerors to compete intelligently and on equal terms. In any event, the obtaining of the requisite certification is a matter between the offeror and the federal agency which has the responsibility of granting the approval of the protester's approach.

PROCUREMENT**Competitive Negotiation
Requests for proposals
Terms
Ambiguity allegation
Interpretation**

Although agency advice might have been confusing regarding whether compliance with a certification requirement was a prerequisite to submitting a proposal, where the solicitation provision is reasonably clear and unambiguous, protest is denied.

PROCUREMENT B-233748 Feb. 24, 1989
Specifications 89-1 CPD 205
Minimum needs standards
Competitive restrictions
Performance specifications
Messes

PROCUREMENT
Specifications
Performance specifications
Adequacy

While contracting agency generally must give bidders sufficiently detailed information in solicitation to enable them to compete intelligently and on a relatively equal basis, solicitation is not deficient where performance work statement reasonably describes and estimates work even though it does not eliminate all risk of performance to the contractor.

PROCUREMENT B-233357 Feb. 27, 1989
Competitive Negotiation 89-1 CPD 207
All-or-none offers
Acceptance

Award to an offeror submitting an "all or none" proposal of maintenance services for eight categories of laboratory equipment is proper since solicitation did not preclude "all or none" offers and the only other technically acceptable firm offered to perform only three of the required eight items; therefore, the best interests of the government required an award to the "all or none" offeror, even though at a higher price for the three items offered by the other.

PROCUREMENT B-233357 Con't
Competitive Negotiation Feb. 27, 1989
Best/final offers
Submission
Timeliness

Consideration of best and final offer (BAFO) which contained an "all or none" qualification is not precluded as a late modification of proposal where it was received before the closing date for receipt of BAFOs.

PROCUREMENT B-233598.2 Feb. 27, 1989
Bid Protests 89-1 CPD 208
GAO procedures
Administrative reports
Comments timeliness

Dismissal of protest for failure to file comments is affirmed. Even though the protester did not realize that the agency submission it received at the time the agency's report was due was the report, this does not excuse the protester's failure to timely file comments or some other expression of continued interest.

PROCUREMENT B-228233.3 Feb. 28, 1989
Bid Protests 89-1 CPD 209
GAO procedures
Protest timeliness
10-day rule

Request for reconsideration is denied where argument that protester should have received award because it was low after receipt of second round of best and final offers was not timely raised in original protest.

PROCUREMENT **B-231880.3 Feb. 28, 1989**
 Competitive Negotiation **89-1 CPD 210**
 Contract awards
 Administrative discretion
 Technical equality
 Cost savings

Notwithstanding greater importance of other factors in overall evaluation scheme, agency may make award to lower-cost offeror where record establishes that contracting officer reasonably determined proposals to be technically equal.

PROCUREMENT
 Competitive Negotiation
 Offers
 Evaluation
 Point ratings

Protest against use of adjectival ratings for evaluation of proposals is denied since use of adjectival ratings scheme to evaluate offers generally is proper and record shows that adjectival ratings accurately reflected evaluators' point scoring and narrative evaluation.

PROCUREMENT **B-233255; B-233330**
 Sealed Bidding **Feb. 28, 1989**
 Invitations for bids **89-1 CPD 217**
 Terms
 Risks

Protests that solicitations for grounds maintenance services and refuse collection and disposal services subject bidders to unreasonable financial risks because they do not contain a cost-reimbursement line item for the repair or replacement of used government-furnished equipment are without merit where the solicitations contain sufficient information for offerors to compete intelligently and on equal terms; there is no legal requirement that solicitations eliminate all risk for the contractor.

PROCUREMENT

B-233264 Feb. 28, 1989

Sealed Bidding

89-1 CPD 211

Invitations for bids

Post-bid opening cancellation

Justification

Competition enhancement

Agency decision to cancel the solicitation after bid opening is justified where agency concludes that the incumbent firm which was a major potential supplier of the services should be given an opportunity to compete.

PROCUREMENT

B-233782 Feb. 28, 1989

Sealed Bidding

89-1 CPD 212

Bid guarantees

Sureties

Acceptability

Procuring agency reasonably rejected bid for nonresponsibility of individual surety on bid bond where the surety's integrity was called into question because he was indefinitely suspended at the time of bid opening, and subsequently debarred from contracting with the federal government.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-203900 Feb. 2, 1989
Federal Administrative/Legislative Matters
Administrative agencies
Organizational structure
Statutory compliance
Inspector General

An appropriation restriction contained in the Treasury Appropriations Act of 1989, Pub. L. No. 100-440, prohibiting the placement of certain Treasury law enforcement organizations under the "operation, oversight or jurisdiction" of the Treasury Inspector General, was found to conflict with certain provisions of the Inspector General Act Amendments of 1988, Pub. L. No. 100-504, that established a statutory Inspector General in the Department of the Treasury. The latter enacted Pub. L. No. 100-504 supersedes the "jurisdiction" and "oversight" provisions in Pub. L. No. 100-440. The "operation" provision is not in conflict and therefore this provision of the restriction continues in effect.

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